IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. CIVIL FIRST APPEAL NO.26/1999

Bhagwandas (deceased) through his legal heirs
1/1. Buddhi Ballabh S/o Bhagwandas Sharma
...defendant-appellant
Versus
Panchayat Samiti, Dag, Tehsil Gangdhar (Jhalawar)
...plaintiff-respondent
AND
Sales Manager, Indian Oil Company Depot, Kota
...defendant-proforma-respondent

Date of Judgment ::: 3rd July, 2007

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Shri B.L. Mandhana, Counsel for appellant
Shri S.N. Gupta, Dy. G.A., for plaintiff-respondent
Shri K. Verma, Advocate, for
Shri S. Kasliwal, Counsel for defendant-proforma-respondent

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By the Court:-

This appeal under Section 96 of the Code of Civil Procedure on behalf of the defendant No.1 is directed against the impugned judgment and order dated 17th November, 1998 passed by the District Judge, Jhalawar, whereby the trial court decreed the suit of the plaintiff-respondent No.1 for recovery of arrears of rent of Rs.8,217/- with interest at the rate of 12% per annum from April, 1994 till the date of realization.

The only argument raised on behalf of the appellant during the course of arguments is that the learned trial court has awarded pendente-lite and future interest at the rate of 12% per annum whereas as per provisions of Section 34 of the Code of Civil Procedure, the interest could not have been awarded at the rate of more than 6% per annum, therefore, decree of trial court to that extent be set-aside/modified.

The relevant facts, in brief, of the case are that the plaintiff-respondent No.1 filed suit for recovery of arrears of rent in the trial court on 19th July, 1994, for a sum of Rs.75,750.50p., being difference of the amount of rent for the period from 7th January, 1969 to 31st October, 1993, and arrears of rent for subsequent period. The defendant-appellant contested the suit and one of the pleas was that the suit is barred by limitation. The trial court, after considering the submissions of learned counsel for both the parties and considering the record, passed a decree of arrears of rent only in respect of three years period preceding to filing of the suit. The trial court passed a decree for a sum of Rs.8,217/- and interest thereon at the rate of 12% per annum from April, 1994.

The learned counsel for both the respondents have

not seriously opposed the prayer of the learned counsel for the appellant to reduce the rate of interest from 12% to 6% per annum on the decreetal amount of Rs.8,217/-.

I have considered the submissions of learned counsel for both the parties and also the provisions of Section 34 of the Code of Civil Procedure and after considering the same I find force in the contention of the learned counsel for the appellant. The learned trial court committed illegality in awarding interest at the rate of 12% per annum for the period of the suit remained pending in Court and for future period also. Therefore, the decree of the lower court to that extent is liable to be set-aside and modified.

Consequently, the appeal is partly allowed. The impugned decree passed by the trial court is modified to the extent that the plaintiff-respondent no.1 will be entitled to interest on the decreetal amount at the rate of 6% per annum from the date of filing of the suit i.e. 19th July, 1994 till the date of realization of the amount. Rest of the decree passed by the trial court is upheld. There will be no order as to costs.

(Narendra Kumar Jain) J.

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